

**SUMMARY OF SUBSTANTIVE CHANGES TO THE
HABITAT CONSERVATION ORDINANCE
8/1/06**

Clark County Code 40.440 (Exhibit “A”)

Page/ Line	Change	Effect	Reason	Source	Purpose Reference (see last page)
p. 1-2, lines 27-44	Purpose and values statement for regulating agriculture to protect habitat.	Clarify balance between agricultural uses and habitat protections.	Growth Management Act requires preservation of agriculture and protection of habitat	Agriculture working group recommendations; BOCC discussions.	1. Protect habitat areas now and always; 2. Reasonable use; 13. Agricultural purposes.
p.2, lines 61-62	Refer to Agricultural Module.	Agricultural activities adjacent to riparian areas may be subject to agricultural module.	Management plans may use areas larger than the riparian area to mitigate; Activities adjacent to default riparian areas may not cause sediment, nutrients or chemicals to enter streams.	Agriculture working group recommendation.	1. Protect habitat areas now and always; 12. Flexible and site specific; 13. Agricultural purposes.
p.2-3, lines 78-96	Change water typing system.	The new system is the one that the DNR now uses.	The county relies on stream definitions, mapping and typing from DNR.	WAC 222.	6. BAS.
p.4, lines 128-129	Define BAS	WAC defines best available science (BAS)	Allows users of the ordinance to determine if their references meet BAS.	Stakeholders group meeting, June 20,05 and Original Task Force meeting, Apr 13/05.	6. BAS.

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p.4, 5 th block	Move expansion of existing homes from exemptions into Reasonable Use section	Expansion is still allowed, but mitigation to the extent practicable will be required	Expansion of existing homes without mitigation could cause significant degradation of habitat functions and values	ESA Advisory Committee report to BOCC.	1. Protect habitat areas now and always; 2. Reasonable use; 3. Functional integrity; 4. Review; 12. Flexible and site specific.
p.5, 1st block	Maintenance of yards is exempt	Lawn maintenance is not subject to ordinance	Regulation would be too intrusive and difficult to enforce.	BOCC discussions.	2. Reasonable use; 8. Voluntary conservation; 10. Exemptions
p.5, 3 rd block and p.6, 8 th and 9 th blocks	Move existing agricultural activities in riparian areas to agricultural module for review.	Existing agriculture, which is currently exempt, will be subject to regulation after July 11, 2007	Some agricultural practices cause degradation. Clallam Co. court case and GMA hearing board remand requires county to regulate. The delay is to allow for development of guidelines.	Agriculture working group recommendation.	1. Protect habitat areas now and always; 2. Reasonable use; 5. Education, outreach and incentives; 12. Flexible and site specific; 13. Agricultural purposes.
p.5, 4 th block	Exempt emergency repair of utilities or public facilities.	Clarifies that such activities are exempt.	Emergencies require prompt responses.	Utility Technical Advisory Group recommendation.	3. Functional integrity; 10. Exemptions.

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P.5, 5 th block	Exempt operations and maintenance of utilities and public facilities that have no further impacts.	Clarifies that such activities are exempt.	Permitting would not produce better environmental outcomes since there are no increased impacts.	Utility Technical Advisory Group recommendation.	1. Protect habitat areas, now and always; 11. Do not substantially diminish.
p.5, 7 th block	Move fire hazard clearing into Reasonable Use section	Clearing will now be accompanied by mitigation as practicable.	Such clearing, while necessary, could cause degradation without any mitigation.	ESA Advisory Committee report to BOCC.	1. Protect habitat areas now and always; 2. Reasonable use; 3. Functional integrity.
p.7, lines 151-152	Change from avoiding or reducing activities to avoiding or reducing impacts of activities.	This clarifies that activities within riparian areas are possible as long as impacts are avoided or reduced.	There are conflicting understandings of this sentence.	Stakeholder meeting of April 11,05. See also <i>Management Recommendations for Washington's Priority Habitats, Riparian</i> , WDFW, p. 87	1. Protect habitat areas, now and always; 3. Functional integrity; 11. Do not substantially diminish.
p.7, lines 162-163	Move existing priority from section 020.3.k	No new effect	Next section talks about on-site and off-site, so this sets priorities.	Existing priority in 40.440.020.3k.	1. Protect habitat areas, now and always; 3. Functional integrity; 11. Do not substantially diminish.
p.7, lines 164-170	Use science to guide mitigation. The science used must meet state BAS standards.	Applicants may propose alternative mitigations as long as they meet the BAS definition.	The best mitigations meet the needs of both the environment and the applicant.	Stakeholders meeting of June 20,05	5. Education, outreach and incentives; 6. BAS; 12 Flexible and site specific.

Page/ Line	Change	Effect	Reason	Source	Purpose Reference (see last page)
p.7, lines 177-179 and 183-185	Add to potential mitigations: prohibit invasive plants and replace with natives.	Native plants may be re-established.	Native plants provide better habitat functions and values.	ESA Advisory Committee report to BOCC.	3. Functional integrity; 4. Review; 5. Education, outreach and incentives; 6. BAS.
p.7, lines 186-187	Add to potential mitigations: Fence out livestock if necessary.	Prevent bank erosion and protect water quality.	Livestock can break down banks and contaminate streams.	Stakeholders meeting of Feb 22,05.	4. Review; 9. Avoid first; 12. Flexible and site specific.
p.7-8, lines 188-194	Add to potential mitigations: Use existing stream crossings where feasible; any new ones must meet WDFW standards.	Reduce the number of new crossings needed.	Crossings constrict streams and damage fish habitat.	ESA Advisory Committee report to BOCC; Stakeholders meeting of Apr 11,05.	4. Review; 6. BAS, 7. WDFW; 12 Flexible and site specific.
p.8, lines 201 and 204	Add to potential mitigations: Use LID and avoid topsoil removal or compaction.	Reduce runoff impacts and retain capacity of topsoil to filter pollutants.	Untreated runoff degrades water quality. Topsoil is an effective filter for chemicals and nutrients.	Stakeholders group meeting of Feb 22,05. See <i>Low Impact Development Technical Guidance Manual</i> , Puget Sound Action Team, 2005.	4. Review; 6. BAS; 12, Flexible and site specific.

Page/ Line	Change	Effect	Reason	Source	Purpose Reference (see last page)
p. 8, <i>lines 202-203</i>	Add to potential mitigations: Limit lawn and garden chemicals in habitat areas.	Reduce chemicals entering streams.	Increased nitrogen in streams degrades fish habitat.	NMFS' Salmon Recovery Plan limiting factors analysis, ch. 3.	4. Review; 6. BAS; 9. Avoid first.
p.8-9, <i>lines 205-236</i>	Add rules for off-site mitigation.	This describes how an applicant can use off-site mitigation.	Off-site mitigation provides an effective way to make up for degradation that can't be mitigated on-site.	ESA Advisory Committee report to BOCC. See also <i>Management Recommendations for Washington's Priority Habitats, Riparian, WDFW.</i>	3. Functional integrity; 4. Review; 7. WDFW; 8. Voluntary conservation; 11. Do not substantially diminish.
p.9-10, <i>lines 247-280</i>	Expand reasonable use assurances.	Details are added to clarify the relationship between property rights and habitat protection.	This section implements the purpose statement on page 1, lines 6-8.	ESA Advisory Committee report to BOCC.	2. Reasonable use.
p.12, <i>lines 355-356</i>	Add incentives to exceed mitigation requirements.	Reward applicants who go the extra mile.	Improvement is usually better than the status quo.	ESA Advisory Committee report to the BOCC; Stakeholders meeting Feb 22,05.	5. Education, outreach and incentives; 8. Voluntary conservation.
p.13-14, <i>lines 411-437</i>	Clarify rules about applications on lands cleared in violation.	Deters clearing to reduce functions and values.	Original ordinance provided little deterrence.	ESA Advisory Committee report to the BOCC; Stakeholders meeting June 20,05.	1. Protect habitat areas, now and always; 7. WDFW

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p.14-15, lines 446-505	Establish programmatic permits and rules for utility maintenance.	Provides for review of recurring activities without being burdensome.	Current ordinance is silent on issue.	Utility Technical Advisory Group recommendation.	1. Protect habitat areas, now and always; 4. Review; 11. Do not diminish substantially.
p.15-19, lines 506-649	Establish Agriculture Module, applicability, rules, and effective date.	Regulates existing and some new agriculture in riparian areas to protect habitat.	GMA Hearings Board remand and Clallam County Appellate Court ruling.	Agriculture Working Group recommendations.	1. Protect habitat areas, now and always; 2. Reasonable use; 3. Functional integrity; 5. Education, outreach and incentives; 12. Flexible and site specific; 13. Agricultural purposes.

Clark County Code 6.110A and 40.100.070 (Exhibit “B”)

Page/ Line	Change	Effect	Reason	Source
1/Table. 6.110A	Add fees for programmatic permits.	Review time is compensated.	New program.	Utilities Technical Advisory Group recommendation.
1&2/Definitions, 40.100.070	Add/change definitions as needed.	Meanings are clear.	Rules should be unambiguous.	Staff/legal review.

HCO Purposes, 40.440.010A

The following are contained in the purpose section of the current Habitat Conservation Ordinance which was adopted in 1997. The only changes are the addition of purposes and values for regulating agriculture to protect habitat. The statements in **bold** are summaries of the sentences that follow. The proposed amendments in the attached table are referenced to these purpose statements in the column headed “**Purpose Reference**”.

1. **Protect habitat areas, now and always:** Protect environmentally distinct, fragile and valuable fish and wildlife habitat areas.
2. **Reasonable use:** Allow for reasonable use of private property.
3. **Functional integrity:** Conserve the functional integrity of the habitats needed to perpetually support fish and wildlife populations.
4. **Review:** These purposes are to be carried out by reviewing impacts of proposed activities within designated habitat areas.
5. **Education, outreach, and incentives:** These purposes are to be carried out through the development of education, outreach and incentive programs.
6. **BAS:** Review shall be based on best available science and the mandates of the Washington Growth Management Act.
7. **WDFW:** Review shall include consultation with the Washington Department of Fish and Wildlife.
8. **Voluntary conservation:** The county shall emphasize education and voluntary conservation options prior to regulatory enforcement.
9. **Avoid first:** Within areas designated by this chapter, development or clearing activities which degrade habitat should generally be avoided where possible.
10. **Exemptions:** Activities listed as exempt in this chapter can be undertaken in habitat areas without additional review.
11. **Do not substantially diminish:** Activities not listed as exempt can be undertaken following county review if they do not substantially diminish the habitat functions and values present.
12. **Flexible and site specific:** It is the intent of the board that this chapter be administered with flexibility and attention to site-specific characteristics.
13. **Agricultural purposes:** Balance agricultural uses and habitat protection.